

provide to the Commissioner, for his consideration in making any such determination, an evaluation of the potential public health significance of such food by a competent authority in accordance with procedures recognized as being adequate to detect any potential hazard to public health. Within 20 working days after receipt of a written request for such written approval the Food and Drug Administration shall either issue such written approval or deny the request. If the request is denied, the applicant shall, upon request, be afforded a prompt hearing conducted in accordance with §108.5 (b) and (c).

(b) Except as provided in paragraph (a) of this section, no manufacturer, processor, or packer may introduce or deliver for introduction into interstate commerce without a permit or in violation of a permit a food for which the Commissioner has determined that a permit is required. Where a manufacturer, processor, or packer utilizes a consolidation warehouse or other storage facility under his control, interstate shipment of any such food from the point of production to that warehouse or storage facility shall not violate this paragraph, provided that no further introduction or delivery for introduction into interstate commerce is made from that consolidated warehouse or storage facility except as provided in paragraph (a) of this section.

§ 108.19 Establishment of requirements for exemption from section 404 of the act.

(a) Whenever the Commissioner finds after investigation that the distribution in interstate commerce of any class of food may, by reason of contamination with microorganisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered interstate commerce, he shall promulgate regulations in Subpart B of this part establishing requirements and conditions governing the manufacture, processing, or packing of the food necessary to protect the public health. Such regulations may be proposed by the Commissioner on his own initiative

or in response to a petition from any interested person pursuant to part 10 of this chapter.

(b) A manufacturer, processor, or packer of a food for which a regulation has been promulgated in subpart B of this part shall be exempt from the requirement for a permit only if he meets all of the mandatory requirements and conditions established in that regulation.

[42 FR 14334, Mar. 15, 1977, as amended at 42 FR 15673, Mar. 22, 1977]

Subpart B—Specific Requirements and Conditions for Exemption From or Compliance With an Emergency Permit

§ 108.25 Acidified foods.

(a) Inadequate or improper manufacture, processing, or packing of acidified foods may result in the distribution in interstate commerce of processed foods that may be injurious to health. The harmful nature of such foods cannot be adequately determined after these foods have entered into interstate commerce. The Commissioner of Food and Drugs therefore finds that, to protect the public health, it may be necessary to require any commercial processor, in any establishment engaged in the manufacture, processing, or packing of acidified foods, to obtain and hold a temporary emergency permit provided for under section 404 of the Federal Food, Drug, and Cosmetic Act. Such a permit may be required whenever the Commissioner finds, after investigation, that the commercial processor has failed to fulfill all the requirements of this section, including registration and filing of process information, and the mandatory portions of §§114.10, 114.80(a) (1) and (2), and (b), 114.83, 114.89, and 114.100 (b), (c), and (d) of this chapter as they relate to acidified foods. These requirements are intended to ensure safe manufacturing, processing, and packing processes and to permit the Food and Drug Administration to verify that these processes are being followed. Failure to meet these requirements shall constitute a prima facie basis for the immediate application of the emergency permit control provisions of section 404 of the act